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A Yes, sir.

REDIRECT EXAMINATION BY MR. SIMPSON:

Q Were you subpoenaed for the Grand Jury?

A No, sir.

Q You did not testify? A. No, sir.

J O H N L. D A Y duly sworn for

DIRECT EXAMINATION BY MR. SIMPSON:

Q Mr. Day, are you a police photographer in Newark?

A I am.

Q How long have you been police photographer?

A Six years.

Q What is your official designation?

A Official photographer.

Q Do you hold a rank of lieutenant or what?

A Yes, sir.

Q Did you go at anybody's request to the two cedar trees

that have been identified, with Mr. Schwartz and Mr.

Mason in the vicinity of this killing, as shown on this

map, and take any photographs, as soon as they were call-

ed into the case? A. Yes, sir.

Q Did you make photographs of the mule prints or mule man-
ure and two cedar saplings? A. Yes, sir.

Q Did you develop those photographs? A. I did.

Q Where are they? A. Why, I don't know where they are now.

Q Did you give them to anybody when you made them?

A No.

Q You held them for call, didn't you? A. I did.

Q That is, you made them as directed. A. I did.

Q You were to produce them when requested?

A Yes, sir.

Q They were never requested and you don't know where they are now? A. Yes, sir.

Q Did you, when you went there, see these mule tracks before you took the photographs?

A I did.

Q And did you see this mule manure? A. Yes, sir.

Q And did you see either the bent or the broken condition of the cedar saplings? A. Yes, sir.

Q And you were specially directed to photograph that, weren't you? A. Yes.

CROSS EXAMINATION BY MR. PFEIFFER:

Q Are you an expert on the subject of manure, Lieutenant?

A I don't think I am.

Q How do you know it was mule manure as the Senator just put it into your mouth?

MR. SIMPSON: I did not put anything into

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his mouth.

Q You will mind, you are under oath, Senator.

MR. SIMPSON: I am not under oath. You
ought to be.

Q I mean Lieutenant. Are you able to swear that this was
mule manure and not horse manure?

A It may have been horse manure.

Q Exactly. It may have been and it may not have been,
isn't that it? A. Exactly.

Q Now, about these photographs, how long did you keep these
prints, negative prints, is that what you call them?

A Yes, sir.

Q How long did you keep the negative prints?

A Why, I couldn't tell you how long I kept them.

Q Well, were they in your possession as long as they were
intact? A. Yes, sir.

Q Did you have them at the time the Grand Jury convened
in 1922, which was November, 1922?

A I had them in 1922.

Q Did you have them in 1923?

A And I believe I had them in 1923.

Q 1924? A. That I could not tell you.

Q It was some time, a couple of years after the former
hearing before the Grand Jury that the plates were des-
troyed or what happened to them?

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A I don't know whether they were destroyed or what happened to them. I usually clean my files out usually once every two years. Sometimes we sell them to the hot house people who take the coating off them and use them for hot house glass. Other times we salvage them.

Q My attention is called to the fact that you say there were certain photographs which were developed, is that correct? A. They were all developed.

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Q I mean certain positives were made from some of the negatives, is that correct? A. Yes.

Q What was done with those positives that were made with the negatives? A. They were with the prints.

Q Were positives made from all the negatives?

A What do you mean by a positive?

Q A positive is the picture you ordinarily get, whereas the print is the negative, is that right?

A Yes, sir.

Q Now, did you make positives from each of the negatives?

A I believe I did.

Q But you kept them all in your files?

A I did.

Q Until about two years later?

A I don't know the exact time. Possibly it was two years later, possibly it was a year later.

Q Anyway it was a couple of years ago, something like that,

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two or three years ago? A. Yes, sir.

Q Now, when you took the negative plates from your files, what did you do with the positive prints?

A They went too.

Q They went too? A. Yes, sir.

Q You did not turn those over to a florist or anything; were those positive plates burned up?

Q Why, I don't know; I may have them and I may not, yes. I haven't looked in the files.

Q You haven't looked in your files? A. No.

Q Hasn't Senator Simpson asked you for these photographs?

A No, sir.

Q Has anybody on behalf of the Prosecution asked you?

A No, sir.

Q Well, now, if we ask for them---

MR. SIMPSON: He has been subpoenaed to produce the photographs.

MR. MC CARTER: Well, are you on the stand now or is he? He says he hasn't been asked for them.

MR. SIMPSON: He has been subpoenaed to produce them. What is he here for, to show us his beautiful countenance?

Q Will you show me your subpoena?

A (Witness produces subpoena.)

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MR. PFEIFFER: I am not familiar with New Jersey practice, but this does not look like a subpoena duces tecum.

MR. SIMPSON: Weren't you told when this subpoena was served upon you to produce these photographs?

WITNESS: If I had them to produce them.

MR. SIMPSON: How do you know you did not have them. Do you know or don't you know?

WITNESS: I do know.

MR. SIMPSON: Have you got them or haven't you got them?

WITNESS: I haven't got them. I don't think I have anything pertaining to the prints or the prints now in my files or anywhere.

COURT: Well, you have caused a lot of confusion by a rather inconsequential statement, but you don't know or you do know, either one or the other--you think, to the best of your knowledge, you haven't got anything pertaining to these pictures, negatives, positives or otherwise?

WITNESS: No.

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FURTHER CROSS EXAMINATION BY MR. PFEIFFER:

Q Did any representative of the state come to your office prior to serving a subpoena upon you and ask you about these and give you time to look them up, or were you just served with a subpoena and told to come here?

A I believe someone had called up and asked about them. I looked through the files at that time and I could not find them.

Q That is all they did about it, was it, until they served you with a subpoena? A. Yes.

REDIRECT EXAMINATION BY MR. SIMPSON:

Q Well, all that was done was to ask you to look through your files for them and you did look ~~ghxx~~ through your files for them and you did not find them, is that a fact?

A Yes, sir.

Q Then what do you mean by saying you don't know whether you have got them or not?

A The reason I said that was because there was one file which I have not looked through yet at home.

Q Well, will you look through that file when you go home?

A I had called my wife up before and asked her if there was any in the file, and she said no.

Q Well, what do you say under oath now, that you have got these or haven't got these photographs?